

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HARRINGTON GLOBAL OPPORTUNITY
FUND, LIMITED,

Plaintiff,

v.

CIBC WORLD MARKETS CORP.; CIBC
WORLD MARKETS INC.; BOFA
SECURITIES, INC.; MERRILL LYNCH
CANADA INC.; MERRILL LYNCH
PROFESSIONAL CLEARING CORP.; TD
SECURITIES, INC.; TD SECURITIES(USA)
LLC; UBS FINANCIAL SERVICES, INC.;
UBS SECURITIES CANADA, INC.; SOCIETE
GENERALE CAPITALE CANADA INC.;
SG AMERICAS SECURITIES, LLC; AND
JOHN DOES 1 THROUGH 10,

Defendants.

Civil Action No.: 1:21-cv-00761-LGS

Hon. Lorna G. Schofield

ANSWER

Defendants BofA Securities, Inc. (“Merrill-US”) and Merrill Lynch Canada Inc. (“Merrill-Canada”) (collectively, “Merrill Defendants”), by and through their undersigned attorneys, hereby answer and assert affirmative defenses and other defenses as follows to the Amended Complaint in the above-captioned action, and in so doing deny the allegations set forth in the Amended Complaint except as specifically stated below.

Merrill Defendants note that, in its Opinion dated February 9, 2022 (ECF No. 88), the Court dismissed all claims against defendants UBS Financial Services, Inc., UBS Securities Canada, Inc., Merrill Lynch Professional Clearing Corp., SG Americas Securities, LLC, and Société Générale Capitale Canada, Inc.; dismissed the claims related to short selling against

Merrill-US, Merrill-Canada, John Doe U.S., and John Doe Canada; and dismissed the common law claims (Counts IV–VII) as to all defendants. Merrill Defendants state that no response is required to the allegations in the Amended Complaint that concern only the claims that have been dismissed.

The Amended Complaint contains unnumbered headings and subheadings. To the extent headings or subheadings in the Amended Complaint contain allegations, comments, or conclusions, Merrill Defendants deny all such allegations, comments, or conclusions. The Amended Complaint also contains footnotes. Merrill Defendants treat footnotes as being contained in the numbered Paragraphs from which they depend. Merrill Defendants’ answer to a numbered Paragraph in the Amended Complaint includes, to the extent necessary, their answer to any footnotes that depend from that numbered Paragraph. To the extent any footnotes depend from headings and subheadings rather than numbered paragraphs, Merrill Defendants treat those footnotes as being contained in the numbered Paragraphs within the section to which the footnote is attached.

The Amended Complaint also contains exhibits. Merrill Defendants treat exhibits as being contained in the numbered Paragraphs in which they are referenced, and Merrill Defendants’ answer to a numbered Paragraph in the Amended Complaint includes, to the extent necessary, its answer to any exhibits referenced in that numbered Paragraph.

RESPONSES TO SPECIFIC ALLEGATIONS

1. Merrill Defendants deny the allegations in Paragraph 1.
2. Merrill Defendants deny the allegations in Paragraph 2.
3. Merrill Defendants deny the allegations in Paragraph 3.

4. Merrill Defendants deny that the allegations in Paragraph 4 present a fair and complete description of the matters described therein and on that basis deny the allegations in Paragraph 4.

5. Merrill Defendants deny that the allegations in Paragraph 5 present a fair and complete description of the matters described therein and on that basis deny the allegations in Paragraph 5.

6. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 6.

7. Merrill Defendants deny the allegations in Paragraph 7.

8. Merrill Defendants deny the allegations in Paragraph 8.

9. Paragraph 9 concerns claims that have been dismissed such that no response is required. To the extent a response is required, Merrill Defendants deny the allegations in Paragraph 9.

10. Paragraph 10 concerns claims that have been dismissed such that no response is required. To the extent a response is required, Merrill Defendants deny the allegations in Paragraph 10.

11. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 11.

12. Merrill Defendants deny the allegations Paragraph 12, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first three sentences of Paragraph 12.

13. Merrill Defendants deny the allegations in Paragraph 13.

14. Merrill Defendants deny the allegations in Paragraph 14.

15. Merrill Defendants deny the allegations in Paragraph 15.

16. Paragraph 16 concerns claims that have been dismissed such that no response is required. As to claims that have not been dismissed, Merrill Defendants deny the allegations in Paragraph 16 on the ground that the Court lacks subject matter jurisdiction because, among other reasons, the challenged conduct is impermissibly extraterritorial.

17. Merrill Defendants deny the allegations in Paragraph 17.

18. Merrill Defendants deny the allegations in Paragraph 18.

19. Merrill Defendants deny the allegations in Paragraph 19.

20. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 20.

21. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 21.

22. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 22.

23. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 23.

24. Merrill Defendants deny the allegations in Paragraph 24, except admit that Merrill-U.S. is, among other things, a registered broker dealer that executes securities transactions in the U.S. for its own principal account and the accounts of its customers.

25. Paragraph 25 concerns a party that has been dismissed such that no response is required. To the extent a response is required, Merrill Defendants deny the allegations in Paragraph 25.

26. Merrill Defendants deny the allegations in Paragraph 26, except admit that Merrill-Canada is, among other things, a registered broker dealer that executes securities transactions in Canada for its own principal account and the accounts of its customers.

27. Merrill Defendants deny the allegations in Paragraph 27.

28. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 28.

29. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 29.

30. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 30.

31. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 31.

32. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 32.

33. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 33.

34. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 34.

35. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 35.

36. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 36.

37. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 37.

38. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 38.

39. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 39.

40. Merrill Defendants deny that the allegations in Paragraph 40 present a fair and complete description of the matters described therein and on that basis deny the allegations in Paragraph 40.

41. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 41.

42. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 42.

43. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 43.

44. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 44.

45. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 45.

46. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 46.

47. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 47.

48. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 48.

49. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 49.

50. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 50.

51. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 51.

52. Merrill Defendants deny the allegations in Paragraph 52, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding Urvin's analysis.

53. Merrill Defendants incorporate by reference their responses to Paragraphs 1 through 52 as if more fully set forth herein.

54. Merrill Defendants deny the allegations in Paragraph 54.

55. Merrill Defendants deny that the allegations in Paragraph 55 present a fair and complete description of the matters described therein and on that basis deny the allegations in Paragraph 55.

56. Merrill Defendants deny the allegations in Paragraph 56.

57. Merrill Defendants deny the allegations in Paragraph 57.

58. Merrill Defendants deny the allegations in Paragraph 58.

59. Merrill Defendants deny the allegations in Paragraph 59.

60. Merrill Defendants deny the allegations in Paragraph 60.

61. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 61.

62. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 62.

63. Merrill Defendants deny the allegations in Paragraph 63.

64. Merrill Defendants deny the allegations in Paragraph 64.

65. Merrill Defendants deny the allegations in Paragraph 65.

66. Merrill Defendants deny the allegations in Paragraph 66.

67. Merrill Defendants deny the allegations in Paragraph 67.

68. Merrill Defendants deny the allegations in Paragraph 68.

69. Merrill Defendants deny the allegations in Paragraph 69.

70. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 70.

71. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 71.

72. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 72.

73. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 73.

74. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 74.

75. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 75.

76. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 76.

77. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 77.

78. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 78.

79. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 79.

80. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 80.

81. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 81.

82. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 82.

83. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 83.

84. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 84.

85. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 85.

86. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 86.

87. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 87.

88. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 88.

89. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 89.

90. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 90.

91. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 91.

92. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 92.

93. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 93.

94. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 94.

95. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 95.

96. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 96.

97. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 97.

98. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 98.

99. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 99.

100. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 100.

101. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 101.

102. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 102.

103. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 103.

104. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 104.

105. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 105.

106. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 106.

107. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 107.

108. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 108.

109. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 109.

110. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 110.

111. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 111.

112. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 112.

113. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 113.

114. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 114.

115. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 115.

116. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 116.

117. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 117.

118. Merrill Defendants deny the allegations in Paragraph 118.

119. Merrill Defendants deny the allegations in Paragraph 119.

120. Merrill Defendants deny the allegations in Paragraph 120.

121. Merrill Defendants deny the allegations in Paragraph 121.

122. Merrill Defendants deny the allegations in Paragraph 122.

123. Merrill Defendants deny the allegations in Paragraph 123.

124. Merrill Defendants deny the allegations in Paragraph 124.

125. Merrill Defendants deny the allegations in Paragraph 125.

126. Merrill Defendants deny the allegations in Paragraph 126.

127. Merrill Defendants deny the allegations in Paragraph 127.

128. Merrill Defendants deny the allegations in Paragraph 128.

129. Merrill Defendants deny the allegations in Paragraph 129.

130. Merrill Defendants deny the allegations in Paragraph 130.

131. Merrill Defendants deny the allegations in Paragraph 131.

132. Merrill Defendants deny the allegations in Paragraph 132.

133. Merrill Defendants deny the allegations in Paragraph 133.

134. Merrill Defendants deny the allegations in Paragraph 134.

135. Merrill Defendants deny the allegations in Paragraph 135.

136. Merrill Defendants deny the allegations in Paragraph 136.

137. Merrill Defendants deny the allegations in Paragraph 137.

138. Merrill Defendants deny the allegations in Paragraph 138.

139. Merrill Defendants deny the allegations in Paragraph 139.

140. Merrill Defendants deny the allegations in Paragraph 140.

141. Merrill Defendants deny the allegations in Paragraph 141.

142. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 142.

143. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 143.

144. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 144.

145. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 145.

146. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 146.

147. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 147.

148. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 148.

149. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 149.

150. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 150.

151. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 151.

152. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 152.

153. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 153.

154. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 154.

155. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 155.

156. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 156.

157. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 157.

158. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 158.

159. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 159.

160. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 160.

161. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 161.

162. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 162.

163. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 163.

164. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 164.

165. Merrill Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 165.

166. Merrill Defendants deny the allegations in Paragraph 166.

167. Merrill Defendants deny the allegations in Paragraph 167.

168. Merrill Defendants deny the allegations in Paragraph 168.

169. Merrill Defendants deny the allegations in Paragraph 169.

170. Merrill Defendants deny the allegations in Paragraph 170.

171. Merrill Defendants deny the allegations in Paragraph 171.

172. Merrill Defendants deny the allegations in Paragraph 172.

173. Merrill Defendants deny the allegations in Paragraph 173.

174. Merrill Defendants deny the allegations in Paragraph 174.

175–204. Paragraphs 175 through 204 concern parties and claims that have been dismissed such that no response is required. To the extent a response is required, Merrill Defendants deny the allegations in Paragraphs 175 through 204.

205. Merrill Defendants incorporate by reference their responses to Paragraphs 1 through 174 as if more fully set forth herein.

206. Merrill Defendants deny the allegations in Paragraph 206.

207. Merrill Defendants deny the allegations in Paragraph 207.

208. Merrill Defendants deny the allegations in Paragraph 208.

209. Merrill Defendants deny the allegations in Paragraph 209.

210–216. Paragraphs 210 through 216 concern parties and a claim that has been dismissed such that no response is required. To the extent a response is required, Merrill Defendants deny the allegations in Paragraphs 210 through 216.

217–225. Paragraphs 217 through 225 concern parties and a claim that have been dismissed such that no response is required. To the extent a response is required, Merrill Defendants deny the allegations in Paragraphs 217 through 225.

226–234. Paragraphs 226 through 234 concern parties and a claim that have been dismissed such that no response is required. To the extent a response is required, Merrill Defendants deny the allegations in Paragraphs 226 through 234.

235–245. Paragraphs 235 through 245 concern parties and a claim that have been dismissed such that no response is required. To the extent a response is required, Merrill Defendants deny the allegations in Paragraphs 235 through 245.

PRAYER FOR RELIEF

Merrill Defendants deny that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

Merrill Defendants assert the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims against Merrill Defendants are untimely and barred, in whole or in part, by the applicable statutes of limitations or of repose.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims against Merrill Defendants are barred, in whole or in part, by Plaintiff's failure to mitigate or attempt to mitigate any damages it might have suffered, and any recovery by Plaintiff must be barred or reduced by reason thereof.

Dated: March 28, 2022

O'MELVENY & MYERS LLP

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